IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 20433 of 2006

Date of decision: 22.12.2006

Secretary, Health & Family Welfare Department
and ors …Petitioners

Versus

Surjit Singh and another …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Ms Rita Kohli, Sr DAG Punjab for the petitioners.

The petitioners, in this petition under Articles 226/227 of the Constitution of India, seek quashing of the award dated 3.3.2006 (Annexure P6) passed by the Presiding Officer, Labour Court, Patiala (respondent-2) whereby the termination from service of respondent-1 Workman has been held to be illegal.

The respondent-1 Workman was appointed as a Class-IV Peon on 89 days basis on 27.4.1992. His services were extended from time to time. Thereafter vide order dated 20.4.1995, his services were regularized w.e.f. 31.12.1994. He was to be on probation for a period of 2 years w.e.f. 31.12.1994. During the year 2004, the petitioners-Management terminated his services vide order dated 8.11.2004. On account of the said termination from service, respondent-1 raised an industrial dispute which was referred by the State Government to the Labour Court under Section 10(1)(c) of the Industrial Disputes Act, 1947 (Act – for short). During the proceedings before the Labour Court, the petitioners did not put in appearance. The Labour Court

directed the petitioners to attend the Court on the date fixed but they neither attended the Court on the fixed date nor sent any information. Accordingly, they were proceeded against exparte. The respondent-1 Workman appeared before the Labour Court and submitted his claim. The Labour Court held that in view of the un-denied averments of the Workman, it was established that he after having served the Management for more than 240 days during a period of 12 calendar months preceding the date of his termination from service, has got the protection of Section 25F of the Act. The petitioners-Management, it was observed, did not comply with the provisions of Section 25F of the Act, therefore, it stood proved that termination of his services was illegal. Accordingly, he was held entitled to reinstatement in service with continuity of service. However, since in his claim, he had stated that he is not un-employed, his claim for back wages was disallowed. It was, however, held that the Management is at liberty to transfer him to another place outside Chandigarh.

Ms Rita Kohli, learned Senior DAG Punjab appearing for the petitioners has submitted that respondent-1 had remained absent from duty from 28.11.2001 to 27.5.2002 and from 25.6.2002 onwards. He was served with the charge sheet dated 30.7.2002 on account of his unauthorized absence from duty. The respondent-1 did not furnish any reply to the charge sheet and a departmental inquiry was initiated. The Inquiry Officer in his inquiry report held the charges to be proved against respondent-1. A copy of the inquiry report was sent to respondent-1 and his reply was called for. However, no reply was received from him and accordingly, by order dated 8.11.2004 (Annexure P2), his services were terminated on account of his absence from duty for the period from 28.11.2001 to 27.5.2002 and 25.6.2002 to 16.3.2003. Therefore, it is contended that the petitioner is not entitled to reinstatement in service.

We have given our thoughtful consideration to the contentions of the learned counsel for the petitioners. However, we find no merit in the same.

A perusal of the award dated 3.3.2006 (Annexure P6) passed by the Presiding Officer, Labour Court (respondent-2) would show that the petitioners despite being asked to attend the Court failed to attend the hearing of the case and were proceeded against exparte. Nothing was placed before the Labour Court to show that the Workman's services were not terminated illegally. No reason is forthcoming as to why the petitioners did not put in appearance before the Labour Court. The material which is now sought to be placed on record was not before the Labour Court. In any case, the material that has now been placed on record is absolutely vague and unclear. A perusal of the office order dated 8.11.2004 (Annexure P2) whereby the services of the petitioner have been terminated under Rule 8 of the Punjab Civil Services (Punishment and Appeal Rules), 1970 (Rules – for short) would show that the petitioner was served with the charge sheet vide office letter No.CC(3)-Pb-02/6095 dated 30.7.2002. In terms of the said charge sheet, it is alleged that the petitioner remained absent from duty from 28.11.2001 to 27.5.2002 and from 25.6.2002 to 16.3.2003. We fail to understand how a charge sheet could be issued on 30.7.2002 in respect of the absence for the period subsequent to the said date i.e. from 30.7.2002 till 16.3.2003. In fact, it is the pleaded case of the respondent-1 in para 6 of the writ petition that respondent-1 was served with the charge sheet dated 30.7.2002 but he did not submit reply in time. Vide office letter No.CC(3) Pb-02/6926, dated 20.9.2002, he was aforded further time to file reply to the charge sheet but he did not submit his reply to the charge sheet. From this also, it remained unclear as to how a reply could be sought on 20.9.2002 in respect of the absence period till 16.3.2003 for which charge sheet had been issued. It is submitted that respondent-1 did not co-

operate in the inquiry and the charges were held to be proved by the Inquiry Officer in terms of the report submitted by him. A reference is also made to another charge sheet issued vide No.CC(3) Pb-04/1290 dated 10.3.2004 on account of his remaining absent unauthorisedly w.e.f. 23.7.2003 onwards and in not obeying the orders of the authorities. The respondent-1, it is stated, did not respond to the charge sheet even after the lapse of stipulated period of time. A regular inquiry was instituted against respondent-1 vide letter No.CC(3) Pb-04/4060 dated 18.6.2004. His services were terminated by issuing an exparte speaking order dated 8.11.2004 (Annexure P2). The said speaking order dated 8.11.2004 (Annexure P2) does not make any mention of the subsequent charge sheet dated 10.3.2004 that was issued to respondent-1 under Rule 8 of the Rules relating to his absence from 23.7.2003 onwards. However, in the ultimate order that has been passed, it has been observed that regarding charge of unauthorized absence from duty from 28.11.2001 to 27.5.2003 and 25.6.2002 to 16.3.2003, respondent-1 has been given full opportunity to defend his case but he could not give any defence. From this, it was established that he was not interested in serving and accordingly his services were terminated and the period of his absence from 28.11.2001 to 27.5.2002, from 25..6.2002 to 16.3.2003 and from 23.7.2003 till date of passing of the order i.e. 8.11.2004 would be treated as ‘dies non’. Though, the period from 23.7.2003 has been ordered to be treated as ‘dies non’ but the office order does not show that the respondent-1 was given opportunity to defend his absence regarding his unauthorized absence from 23.7.2003 onwards, which is stated to be the subject matter of the second charge sheet that was issued on 10.3.2004. Therefore, the office order dated 8.11.2004 (Annexure P2) is not clear and shows non-application of mind.

In view of the aforesaid circumstances, the order passed by the Labour Court calls for no interference in exercise of the supervisory jurisdiction of this Court under Articles 226/227 of the Constitution of India. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. This Court, in exercise of its writ jurisdiction, does not to act as an appellate Court. This limitation necessarily means that findings of fact reached at by the Labour Court as a result of appreciation of evidence, is not to be re-opened or questioned in writ proceedings. The exercise of the supervisory writ jurisdiction of this Court does not include re-appreciation of evidence and on that basis dislodging the findings of facts recorded by the inferior Courts. It is not the case of the petitioners that the Labour Court had refused to admit the admissible and material evidence in possession the petitioners. The petitioners for reasons best known to them in any case did not submit the material which was in their possession. There is, therefore, nothing on record to dislodge the findings of facts reached at by the Labour Court after appreciation of evidence. The services of respondent-1 had been terminated without compliance of the provisions of Section 25F of the Act. As such the respondent-1 is entitled to the consequences of its breach.

For the foregoing reasons, there is no merit in this petition and the same is accordinlgy dismissed.

(S.S.NIJJAR)
JUDGE

22.12.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO